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Supreme Court of the United States

October Term, 1981

BOARD OF EDUCATION, ISLAND TREES UNION FREE SCHOOL DISTRICT No. 26; RICHARD AHRENS; FRANK MARTIN; CHRISTINA FASULO; PATRICK HUGHES; RICHARD MELCHERS; RICHARD MICHAELS; and LOUIS NESSIM,

Petitioners,

against

STEVEN A. PICO, by his next friend, FRANCES PICO; JACQUELINE GOLD, by her next friend, RONA GOLD; RUSSELL RIEGER, by his next friend, SAMUEL RIEGER; GLENN YARRIS, by his next friend, RICHARD YARRIS and PAUL SOCHINSKI, by his next friend, HENRY SOCHINSKI,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF THE AMERICAN JEWISH CONGRESS; THE AMERICAN JEWISH COMMITTEE; THE AMERICAN ETHICAL UNION; THE AMERICAN ORTHOPSYCHIATRIC ASSOCIATION; THE ETHICAL HUMANIST SOCIETY OF LONG ISLAND; THE LONG ISLAND COUNCIL OF CHURCHES; THE NATIONAL COUNCIL OF JEWISH WOMEN; THE NATIONAL COUNCIL OF TEACHERS OF ENGLISH; THE OFFICE OF COMMUNICATION, UNITED CHURCH OF CHRIST; THE PILGRIM PRESS, UNITED CHURCH BOARD FOR HOMELAND MINISTRIES; THE SPEECH COMMUNICATION ASSOCIATION; THE STUDENT PRESS LAW CENTER; THE UNION OF AMERICAN HEBREW CONGREGATIONS; and THE UNITARIAN UNIVERSALIST ASSOCIATION; *AMICI CURIAE*

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INTEREST OF THE AMICI

This brief amicus curiae in support of the Respondents is submitted with the consent of the parties. The interests of the amici in this case are as follows:

The American Jewish Committee and The American Jewish Congress were founded in 1906 and 1918, respectively. Both are national organizations concerned with the preservation and security of the constitutional rights of American Jews. Both believe that the preservation of such rights can be secured only through the preservation of the rights of all Americans.

The American Ethical Union, a federation of Ethical Humanist Societies, founded in 1966, is concerned

with the constitutional rights of all Americans. It is deeply concerned with the freedoms granted under the First Amendment and in particular, with the freedom to teach and the freedom to read.

The Americal Orthopsychiatric Association is a national, educational, professional membership association that brings together in a collaborative effort behavioral, medical and social scientists in the study and treatment of problems of human behavior. The Association joins in this brief based on its mental health concerns about the issue at stake. These concerns are primarily related to the fact that a basic ingredient of developmental health for children is freedom to learn, explore and discover. If this

freedom is inhibited by narrow and prohibitive action, there will be interference in the maturation process.

The Ethical Humanist Society of Long Island is a humanist religious fellowship that is deeply concerned with First Amendment freedoms in general and academic freedom in particular.

The Long Island Council of Churches is a Christian mission ecumenical organization concerned about freedom of speech, human rights, aid to the poor, needy and outcast. It seeks to protect the right of free choice with responsible efforts to provide a wide range of means enabling all to evaluate and understand the diversity of our culture under one God.

The National Council of Jewish Women is a volunteer organization, dedicated in the spirit of Judaism to advancing human welfare and the democratic way of life. It believes that the freedom, dignity, and security of the individual are basic to American democracy, that individual liberties and rights guaranteed by the Constitution are keystones of a free society, and that any erosion of these liberties undermines that society.

Founded in 1911, the National Council of Teachers of English with nearly 80,000 members and subscribers focuses on the major concerns of teachers of English and the language arts. Through conferences and publications, it provides

the profession with a forum for the exchange of ideas with the intent of improving the status of the profession. NCTE's interest in the case rests in its belief that students' freedom to read is an essential element in developing free human beings who can learn and develop successful survival strategies for the world in which we live.

The Office of Communication of United Church of Christ is the national instrumentality of the United Church of Christ charged by the church constitution to conduct a ministry in the mass media. The Office of Communication traditionally has engaged in legal and educational work which upholds First Amendment principles of free speech and press. The interest of the Office in this case stems

directly from its other First Amendment activities and is based on the significance of the particular issues in the case.

The United Church Board for Homeland Ministries is the organization recognized by the United Church of Christ as the instrumentality charged with the responsibility for carrying out that denomination's homeland mission. Among its activities is the conduct of a publication division, The Pilgrim Press. It is concerned with the preservation of First Amendment rights, particularly with respect to freedom of speech issues.

The Speech Communication Association, founded in 1914, is a non-profit educational organization of some 5,000 members. The Association's purpose is to promote study, criticism, research, teaching and application of the artistic, humanistic, and scientific principles of communication, particularly speech communication. Maters relating to the First Amendment have been of long-standing concern to the Association and its Commission on Fredom of Speech.

The Student Press Law Center is a national non-profit organization which provides legal advice and representation to student journalists facing censorship problems. The Center is committed to the value of the First Amendment rights of all students and believes that the

subjection of students to irrational regulation of ideas and information undermines their First Amendment freedoms.

The Union of American Hebrew Congregations is the central body of Reform Judaism, representing 750 Reform synagogues comprising 1,300,000 individual Jews. It is committed to the protection of First Amendment rights and joins in this brief because it believes that school book censorship, under the circumstances of this case, directly threatens Constitutionally-protected rights.

The Unitarian Universalist Association, an association of churches and fellowships in the United States and Canada, is dedicated to the freedoms

guaranteed by the First Amendment, including freedom to teach and freedom to read.

Statement of the Case

Plaintiffs-respondents, four high school students and one junior high school student, brought suit in state court against the defendants-petitioners Board of Education of the Island Trees Union Free School District and its members [the Board]. Suing on behalf of all junior and senior public high school students in the district and seeking declaratory and injunctive relief, they challenged the Board's removal of nine books from the libraries and curricula of the district's schools, claiming that the removal was in violation of the United States and New York Constitutions and of 42 U.S.C. §1983.

Defendants-petitioners removed the action to the United States District

Court for the Eastern District of New York, which thereafter denied a motion for remand. Prior to discovery, defendants-petitioners moved for summary judgment. The students cross-moved for summary judgment and for certification of the plaintiff class.

By memorandum opinion and order dated August 2, 1979, the Honorable George C. Pratt denied the students' motions and granted summary judgment in favor of the Board. Pico v. Board of Education, Island Trees Union Free School District, 474 F. Supp. 387 (E.D. N.Y. 1979). Apparently viewing itself bound by Presidents Council v. Community School Board, 457 F.2d 289 (2d Cir.), cert. denied, 409 U.S. 998 (1972), the district

court, finding no sharp, focused issue of academic freedom, and giving deference to the school board's traditional control over educational content, ruled that "the First Amendment [does] not preclude a school board from removing books which its members find to be inconsistent with the basic values of the community." The students appealed.

The Court of Appeals for the Second Circuit reversed and remanded the case for trial. Pico v. Board of Education, Island Trees Union Free School District No. 26, 638 F.2d 404 (2d Cir. 1980). Although the judges of the Court of Appeals characterized the facts differently, and drew different inferences from them, the basic facts of the case, set forth in their opinions,

are largely undisputed.

In September 1975, the president, vice-president and one other member of the school board attended a conference sponsored by an organization called Parents of New York - United (PONY-U), a self-proclaimed "conservative" group. At the meeting, a list of 32 books deemed objectionable by PONY-U was distributed, together with excerpts from those books -- in some cases, mere words and phrases -- which PONY-U deemed particularly offensive.

In November, the Board's president and vice-president, having gained entry to the high school library with the assistance of a custodian, searched the library's card catalogue and discovered that nine of the books which PONY-U

considered objectionable were included in the library's collection. The books were The Naked Ape, by Desmond Morris; Down These Mean Streets, by Piri Thomas; Black Boy, by Richard Wright; Soul on Ice, by Eldrige Cleaver; A Hero Ain't Nothing But a Sandwich, by Alice Childress; Laughing Boy, by Oliver LaFarge; Go Ask Alice, (Anonymous); Slaughter House Five, by Kurt Vonnegut, Jr.; and Best Short Stories by Negro Writers, edited by Langston Hughes. A tenth book disapproved by PONY-U, A Reader for Writers, edited by Jerome Archer, was found in the junior high school library, and another, Bernard Malamud's The Fixer, was found to be in the high school curriculum.

In February 1976, at a private

session of the Board, the Board gave an unofficial direction that the 11 objectionable books be removed from the school libraries. The books were removed from the libraries and delivered to the Board's office. Feeling compelled to justify these actions, the Board, on March 19, 1976, issued a press release, stating that the books had been removed after it had come to the Board's attention that there were books in use in the nation's schools which were "anti-American, anti-Christian, anti-Semetic (sic), and just plain filthy." The release stated that the Board was in the process of reviewing the contents of the books, but had already found that

> the books, do, in fact, contain

> material which is offensive to Christians, Jews, Blacks and Americans in general. In addition, these books contain obscenities, blasphemies, brutality and perversion beyond description.

On March 30, 1976, the Board ratified the prior transfer of the books from the libraries to the Board office. At that meeting, the Board also appointed a Book Review Committee and charged it with the responsibility for making recommendations to the Board with respect to the disposition of the books in question. The committee was directed to evaluate the books with reference to four criteria: their educational suitability; good taste; relevance; and appropriateness to age and grade level.

The committee recommended that two of the books, The Naked Ape and Down

These Mean Streets, be removed from the school library. It recommended that five of the books be returned to the library -- Laughing Boy, Black Boy, Go Ask Alice, Best Short Stories by Negro Writers, and Slaughter House Five -- the last one with access conditioned on parental approval. The committee made no recommendations with respect to the remaining books, its members having been unable to read one of them, A Reader for Writers, and unable to reach agreement on two, Soul on Ice and A Hero Ain't Nothing but a Sandwich.

On July 2, 1976, in disregard of the committee's recommendations, the Board decided to restore only one book, Laughing Boy, to the school library and to return one, Black Boy, with access conditioned on parental approval. The

Board decided that all of the remaining nine books should be removed from elementary and secondary libraries and from use in the curriculum. The Board's president, by affidavit prepared for this litigation, stated that his

> objection is to the obscenity and bad taste contained in [the books] as well as to their irrelevance, in [his] opinion to the basic curriculum of the district and to the values which [he], as a board member and president, feels the community wishes inculcated in its youth.

His affidavit further stated that he is a conservative in his general philosophy, that he feels that the community he represents shares that philosophy, and that the validity of his feelings has been confirmed by the fact that he has been re-elected to the Board. His affidavit recited:

> I feel that this is complete vindication for and support of our stand concerning these books.

The Board's vice-president, by affidavit, made similar assertions. His affidavit stated:

> I subscribe to a basically conservative philosophy, especially with regard to fiscal matters, morals and the place of education in our society. I feel that my six fellow board members feel the same way and ... that this is representative of our community.

In the Court of Appeals each of the panel's three judges wrote separately. In Judge Sifton's view, the students were entitled to summary judgment.

> [W]e are presented with more than the inferences to be drawn from

> the act of removing controversial texts from library shelves, and more than the clearly understood, routine and regular task of selecting titles for a school library. What we have instead is an unusual and irregular intervention in the school libraries' operations by persons not routinely concerned with such matters. Moreover, this intervention has occurred under circumstances, including the explanations for their actions given by the participants, which so far from clarifying the scope and intentions behind the official action, create instead grave questions concerning both subjects.

638 F.2d at 414.

In Judge Mansfield's view, the district court's grant of summary judgment to defendants was proper.

> [T]he Board acted on rational and specific grounds relevant to the education and welfare of the school children within its jurisdiction, and it did so fairly and conscientiously. It discontinued the handful of books because all but one contain either vulgar and

indecent language, profanities, explicit sex, sexual perversion, poor grammar, glorification of sex and drugs, or anti-Jewish, anti-Black, or anti-Christian remarks ....

The Board's action does not hinder or destroy anybody's rights of free expression. The Board did not seek to inculcate students with any particular social or political views (e.g., legalized abortion or anti-abortion, adherence to the views of any political party or religion, promotion of the Equal Rights Amendment or the like). No free exchange of ideas was suppressed. No one was imposing views, whether labelled "orthodox" or otherwise, on anybody else. No one has been or will be disciplined as a result of the removal of the books. Nor will anyone be denied an education in line with basic community values. Both parties agree that teachers and students are free to discuss and comment on the themes and ideas of the books in class or on school premises. Students may also be able to purchase the books outside of school or borrow them from a public library. In short there are no First Amendment or

> other constitutional interests at stake ....

638 F.2d at 427-28.

In Judge Newman's view, neither side was entitled to summary judgment; a trial would be necessary to resolve disputed issues of fact.

> [P]laintiffs have alleged that the removal of books from the Island Trees School library was motivated in part by the School Board's objection to the political views expressed in those books. The complaint further alleges that this politically motivated action was taken under circumstances that pose a threat to the free expression and exchange of ideas within the school community that is protected by the First Amendment. In opposing the defendants' motion for summary judgment, the plaintiffs have submitted substantial evidence to support their claim. A trial is required to determine precisely what happened, why it happened, and whether, in the circumstances of this case, the School Board's actions, looking forward from the time they were taken, created a

> sufficient risk of suppressing ideas to constitute a violation of the First Amendment.

638 F.2d at 438.

Because the majority of the panel had determined that the district court's grant of summary judgment was improper, that ruling was reversed and the case was remanded.

A petition for rehearing and for consideration en banc was denied. Pico v. Board of Education, Island Trees Union Free School District No. 26, 646 F.2d 714 (2d Cir. 1980). The Board's petition for certiorari was granted by this Court on October 13, 1981.

SUMMARY OF ARGUMENT

School boards, like other arms of the state, are subject to constitutional constraints. Because the Constitution protects the right to receive information and ideas, and in light of the role which public schools play in American life, decisions as to the content of school curricula and library collections must be premised on educational criteria, and not on the ideological, political, or religious values of school board members. The facts establish that the decision to ban the books at issue here was based not on the former, but on the latter. Accordingly, that decision cannot stand.

The decision cannot stand for another reason as well. The First Amendment demands that the state's

restriction of expression, even in the "special" public school context, be based on narrowly drawn regulations which serve legitimate operational goals. The decision to ban the books was made either without reference to any articulated guidelines or to guidelines which were themselves unconstitutionally vague. For this reason as well, the Board's decision was constitutionally infirm.

ARGUMENT

I. THE EXCLUSION OF BOOKS FROM SCHOOL LIBRARIES AND CURRICULA ON IDEOLOGICAL GROUNDS VIOLATES THE FIRST AMENDMENT RIGHTS OF STUDENTS

School boards, no less than other arms of the state, are subject to constitutional constraints. When their actions infringe upon the constitutional rights of students, teachers or parents, the courts have not only the power, but the duty, to step in. See, e.g., Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). While this Court has recognized that local school authorities have broad discretion in setting school standards, Epperson v. Arkansas, 393 U.S. 97 (1968); Meyer v. Nebraska, 262 U.S. 390 (1923), it has also recognized that this discretion is not unlimited.

> School boards have, of course, important, delicate, and highly dicsretionary functions, but none that they may not perform within the limits of the Bill of Rights.

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637 (1943).

On the record, in this case, were this Court to rule in favor of the Board, it would establish the proposition that public school boards may arbitrarily and on the basis of their members' own narrow political, ideological, moral or religious views select or eliminate instructional or library materials. With all deference to the difficult role that school boards must play, the premise is faulty as a matter of constitutional law.

In Epperson v. Arkansas, supra, this Court explicitly rejected any suggestion that the state may justify the

exclusion of materials from public school curricula for reasons that violate the First Amendment. This Constitutional mandate, as well as the role which the public schools play in American life, require that decisions as to school curricula and library collections be premised on educational criteria, and not on the ideological or political predilections of local school board members or their perceptions of the ideological or political predilections of the majority of their constituents.

This Court has recognized that the Constitution protects the right to receive information and ideas in a wide variety of contexts. Listeners, readers or other willing recipients of expression who have been denied access to expression

protected by the First Amendment have a right to contest the denial. See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976); Procunier v. Martinez, 416 U.S. 396 (1974); Martin v. City of Struthers, 319 U.S. 141 (1943); Meyer v. Nebraska, 262 U.S. 390 (1923). See generally Emerson, Legal Foundations of the Right to Know, 1976 Wash. U.L.Q.

1. As Justice Brennan has said:

> One of the liberties we Americans prize most highly is our freedom to read what we wish and when we wish. It is hard to realize that nothing in the Constitution or the Bill of Rights says anything in terms about a freedom to read, or to listen, or even to think. Yet we know that such liberties are there just as surely as if they were expressly written into the First Amendment.

William J. Brennan, Jr., Address at the

Celebration of the Newark Public Library, May 1963, quoted in E. Moon, Book Selection and Censorship in the Sixties, 1969.

This right to read and to receive information and ideas surely applies in the public school context. Indeed, this right is "nowhere more vital" than in schools and universities. Shelton v. Tucker, 364 U.S. 479, 487 (1960). And it seems obvious that the right is directly threatened by the censorship of instructional materials and library books on ideological grounds.

Surely, school boards must make decisions as to the content of curricula and library collections and amici do not quarrel with the notion that they may make changes based upon economy, shelf

space, educational purpose or any number of other reasonable criteria. In so doing, they inevitably make their own views known and heard. But they must, at the same time, tolerate the expression of other, conflicting positions. See generally, L. Tribe, American Constitutional Law § 12-4 (1978).

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments

that are officially approved. Tinker v. Des Moines Independent Community School District, supra, at 511.

Indeed, decisions designed to exclude from curricula and libraries opinions and doctrines which are not "officially approved" undercut the fundamental justification for public schooling itself.

> The principle of making children good citizens ... does not dictate a grant of carte blanche authority to school boards. While cultivation of the qualities necessary for democratic citizenship is a permissible and admirable aim, the system of American democracy itself places highest value on the integrity of the individual and on individual freedom of thought. If schools were to possess the power to run roughshod over individual rights in education, the state would then be acting contrary to democratic values, the same democratic values which education is meant to

instill.

Note, Challenging Ideological Exclusion of Curriculum Material: Rights of Students and Parents, 14 Harv. C.R. - C.L.L. Rev. 485, 493 (1979) [hereinafter "Ideological Exclusion"].

To acknowledge that school boards have that power is to pervert the very purpose of education:

> That [school boards] are educating the young for citizenship is the reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles as mere platitudes.

West Virginia State Board of Education v. Barnette, supra, at 637.

> The classroom is peculiarly the "market place of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange

> of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection.

Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967) (overturning discharge of state university professor for refusing to affirm that he was not a Communist).

Thus, the conclusion is inescapable that the First Amendment demands, and the proper functioning of the educational process in a democratic society requires, that the removal of books from a school library or classroom curriculum be based on educational considerations, not on political, ideological, moral or religious views.

The proposition is not a novel one. Several courts have recognized limits on school officials' discretion to

censor library collections or curriculum content.* See, e.g., Salvail v. Nashua

* The scholarly commentators have been virtually unanimous in urging recognition of those limits. See e.g., Ideological Exclusion, supra; Comment, Constitutional Aspects of Removing Books from School Libraries, 65 Kent. L. J. 127 (1978); Comment, First Amendment Limitations on the Power of School Boards to Select and Remove High School Text and Library Books, 52 St. John's L. Rev. 457 (1978); O'Neil, Libraries, Liberties and the First Amendment, 42 U. Cin. L. Rev. 209 (1973); Note, Censoring the School Library: Do Students Have the Right to Read, 10 Conn. L. Rev. 747 (1978).

Board of Education, 469 F. Supp. 1269 (D.N.H. 1979) (removal of MS. Magazine from high school library because of objections to its political and sexual content); Minarcini v. Strongsville City School District, 451 F.2d 577 (6th Cir. 1976) (school board's removal of books from school library because it found them distasteful violated students' Constitutional rights); Zykan v. Warsaw Community School Corp., 631 F.2d 1300 (7th Cir. 1980); Right to Read Defense Committee of Chelsea v. School Comm. of Chelsea, 454 F. Supp. 702 (D. Mass. 1978).

That the book removal in this case was based on impermissible ideological considerations is obvious from a consideration of the conceded facts. The sequence of events leading up to the removal of the books establishes that the removal was not an exercise of discretion based on educational values and considerations, but was instead a direct reaction to pressures exerted by persons outside the community who found the books in question offensive to their personal value systems. The search of the card catalogue and the removal of books was done pursuant to PONY-U's suggestion. It followed directly on the heels of the PONY-U meeting and was limited to those books on PONY-U's "unacceptable" list.

That the ultimate decision to ban the books was a suspect reaction to

outside political pressure is further established by the Board's ultimate disregard of the recommendation of its own appointed book review committee and the reasons given by it in justification. In spite of that committee's recommendations, access to all books on the PONY-U list, save two, was denied or severely limited. No reasons for rejecting the committee's recommendations were offered when the decision to reject was made.

That impermissible ideological considerations were at the heart of the Board's decision to ban the books is clear from the Board's public statements issued prior to its final decision as well as the school board president's and vice-president's after-the-fact sworn statements as to the basis for the Board's determination. By its terms, the

judgment that a book is un-American is a political decision. A judgment that a book is blasphemous, is a judgment informed by impermissible religious considerations. See Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 505 (1952). ("It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches, or motion pictures.") A judgment based on a determination that the books are "just plain filthy" is one that invites, not precludes, judicial scrutiny.

School authorities can regulate indecent language because its circulation on school grounds

> undermines their responsibility to try to promote standards of decency and civility among school children ....[B]ut school officials are not the final arbiters of their authority, nor do they have limitless discretion to apply their own notions of indecency. Courts have a First Amendment responsibility to insure that robust rhetoric in student publications is not suppressed by prudish failures to distinguish the vigorous from the vulgar.

Thomas v. Granville Board of Education, 607 F.2d 1043, 1057 (2d Cir. 1979) (Newman, J. concurring) (emphasis supplied).

And a judgment that a book is offensive to Christians or Jews, anti-Christian or anti-Semitic is, given the books at issue here, incomprehensible. In fact, The Fixer, a book judged anti-Semitic by the Board, clearly condemns anti-Semitism as well as the authoritarian society which is

anti-Semitism's seedbed. In words that are remarkably apposite here, its author wrote:

> "What I want to know is what's going on in the world."
>
> "That's all in the Torah, there's no end to it. Stay away from the wrong books, Yakov, the impure."
>
> "There are no wrong books. What's wrong is the fear of them."

B. Malamud, The Fixer, 12-13 (1966) (emphasis added).

The students have shown that books were removed from their library and curriculum on the basis of impermissible ideological criteria, and, therefore, in violation of their First Amendment rights. Accordingly, they are entitled to judgment.

II. THE REMOVAL OF BOOKS FROM SCHOOL LIBRARIES AND CURRICULA WITHOUT REFERENCE TO NARROWLY DRAWN EDUCATIONAL CRITERIA VIOLATES THE FIRST AMENDMENT RIGHTS OF STUDENTS

Alternatively, if this Court determines that the record fails to establish that the Board's decision was premised on impermissible ideological, political, religious and moral grounds, the Board's decision nevertheless cannot stand because it was not based on the narrowly drawn regulations required by the Constitution for regulation of expression.

It is hornbook law that the First Amendment has a "preferred position" in our Constitutional scheme. "Because First Amendment freedoms need breathing space to survive, government may regulate

in the area only with narrow specificity." NAACP v. Button, 371 U.S. 415, 433 (1963). In light of the danger of over-inclusive regulation, courts have been particularly diligent in scrutinizing government intrusions into expression which are based on the content of that expression, as opposed to its time, place or manner. Papish v. University of Missouri Board of Curators, 411 U.S. 667 (1973).

Amici recognize that schools are, in some respects, special institutions where First Amendment rights are concerned. See Healy v. James, 408 U.S. 169 (1972). But, it is a maxim that "[neither] students [nor] teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse

gate." Tinker v. Des Moines Independent Community School District, supra, at 506.

Even in restricted environments, like prisons or the military, regulations on communications which are not reasonable or which are not consistent with the legitimate operational considerations of the institution will not be tolerated. See Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119 (1977); Greer v. Spock, 424 U.S. 828 (1976); Pell v. Procunier, 417 U.S. 817 (1974); Procunier v. Martinez, 416 U.S. 396 (1974). In schools, as in other "special settings" where First Amendment rights must be balanced against other compelling interests, the state must, where practicable, make clear the

classes and methods of expression which it deems irreconcilable with the specific institutional setting. Cohen v. California, 403 U.S. 15, 19 (1971); Thomas v. Granville Board of Education, supra, 607 F.2d at 1049 & n.10.

The Board wholly failed to do that here. Guidelines consistent with the First Amendment did not exist and were not followed in removing the books from the school library and curriculum.

The Review Committee selected by the Board was given guidelines. It was charged to review the books on the basis of the following criteria: 1) their educational suitability; 2) good taste: 3) relevance; 4) appropriateness to age level. These criteria were hastily formulated and amorphous; the relative

weight to be given to each criterion was not specified. Those guidelines were thus unconstitutionally vague.

Accordingly, even assuming that the Board itself in rejecting the committee's recommendations followed the guidelines it had formulated for it, (an assumption not borne out by the record which suggests that the Board members acted on their own following no articulated guidelines), the Board's decision to ban the nine books was invalid. The narrow specificity necessary to validate governmental suppression of communication was wholly lacking.

Because the record establishes that the decision to ban the books was made without reference to narrowly drawn

educational criteria, the decision cannot stand. It violates the First Amendment rights of students.

CONCLUSION

Amici contend that the school board's removal of the books in this case was based not on educational considerations, but rather on impermissible ideological factors. Moreover, the removal of the books was undertaken pursuant to no narrowly drawn regulations or articulated criteria. Under these circumstances, the Board's actions cannot be permitted to stand.

Accordingly, amici respectfully urge this Court to direct the entry of summary judgment in favor of the students-respondents.

Respectfully submitted,

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